

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, TYLER MAGILL, APRIL
MUNIZ, HANNAH PEARCE, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES
ALEX FIELDS, JR., VANGUARD
AMERICA, ANDREW ANGLIN,
MOONBASE HOLDINGS, LLC, ROBERT
“AZZMADOR” RAY, NATHAN DAMIGO,
ELLIOT KLINE a/k/a/ ELI MOSLEY,
IDENTITY EVROPA, MATTHEW
HEIMBACH, MATTHEW PARROTT a/k/a
DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS,
LEAGUE OF THE SOUTH, JEFF SCHOEP,
NATIONAL SOCIALIST MOVEMENT,
NATIONALIST FRONT, AUGUSTUS SOL
INVICTUS, FRATERNAL ORDER OF THE
ALT-KNIGHTS, MICHAEL “ENOCH”
PEINOVICH, LOYAL WHITE KNIGHTS OF
THE KU KLUX KLAN, and EAST COAST
KNIGHTS OF THE KU KLUX KLAN a/k/a
EAST COAST KNIGHTS OF THE TRUE
INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

**PLAINTIFF HANNAH PEARCE’S MOTION TO WITHDRAW AND VOLUNTARILY
DISMISS HER CLAIMS WITHOUT PREJUDICE**

Plaintiff Hannah Pearce respectfully submits this motion to withdraw and voluntarily dismiss her claims without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

On July 9, 2018, this Court dismissed all of Hannah Pearce's claims against the Defendants who had moved to dismiss her Amended Complaint.¹ (ECF No. 335 at 62.) The Court did not address her claims against any non-moving Defendants.² (*Id.*) On September 17, 2019, Plaintiffs filed a Second Amended Complaint which clarified that Ms. Pearce only retained live claims against the defaulted Defendants.³ (ECF. No. 557.)

After careful consideration and consultation with her attorneys, Ms. Pearce has determined that she wishes to withdraw from this case and voluntarily dismiss her only live claims against the defaulted Defendants. Given that this Court has made clear that Ms. Pearce "has not sufficiently alleged her injuries were caused by overt acts committed in connection with Defendants' conspiracy," (ECF No. 335 at 45), Ms. Pearce cannot continue on in this litigation without a colorable claim or likelihood of any damages, even as to the defaulted Defendants. Accordingly, the Court should grant the instant motion permitting Ms. Pearce to voluntarily withdraw.

¹ The "moving" Defendants whose motions to dismiss were granted as to Hannah Pearce were: Jason Kessler, Richard Spencer, Christopher Cantwell, Vanguard America, Robert Ray, Nathan Damigo, Elliot Kline, Identity Europa, Matthew Heimbach, Matthew Parrott, Traditionalist Worker Party, Michael Hill, Michael Tubbs, League of the South, Jeff Schoep, Nationalist Socialist Movement, Nationalist Front, and Michael Peinovich. (ECF No. 335 at 2 n.1.)

² Those Defendants include James Fields, who answered the amended complaint, and the defaulted Defendants: Andrew Anglin, Moonbase Holdings, LLC, Augustus Sol Invictus, Fraternal Order of the Alt-Knights, Loyal White Knights of the Ku Klux Klan, and East Coast Knights of the Ku Klux Klan. (ECF No. 335 at 2 n.1.)

³ According to the Second Amended Complaint, Ms. Pearce only asserts claims against the defaulted Defendants: Andrew Anglin, Moonbase Holdings, LLC, Augustus Sol Invictus, Fraternal Order of the Alt-Knights, Loyal White Knights of the Ku Klux Klan, and East Coast Knights of the Ku Klux Klan. She does not assert claims against any other Defendant.

ARGUMENT

Rule 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. ... Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.” Fed. R. Civ. P. 41(a)(2).⁴

According to the United States Court of Appeals for the Fourth Circuit, the purpose of Rule 41(a)(2) is to freely “allow voluntary dismissals unless the parties will be unfairly prejudiced. ... [T]hus, a district court should grant a Rule 41(a)(2) motion ‘absent plain legal prejudice to the defendant,’” *Bridge Oil, Ltd. v. Green Pac. A/S*, 321 F. App’x 244, 245 (4th Cir. 2008) (internal citations omitted). In this regard, the prejudice must be substantial — “[a] defendant cannot establish prejudice sufficient to defeat a Rule 41(a)(2) motion merely by showing that it has filed a summary judgment motion ... or that it faces the prospect of a subsequent lawsuit.” *Id.* (internal citations and quotations omitted).

It is hard to imagine how any Defendants against whom Ms. Pearce still asserts claims would be prejudiced by her withdrawal from this lawsuit. The defaulted Defendants have served no discovery on Ms. Pearce, nor have they responded to a single discovery request from her. They have expended no resources whatsoever in participating in this litigation against Ms. Pearce. *See e.g., White v. McClain*, 5:09-cv-0797, 2009 WL 6366741, at *2 (S.D.W. Va. Dec. 4, 2009), *report and recommendation adopted*, 5:09-cv-00797, 2010 WL 1626911 (S.D.W. Va. Apr. 20, 2010) (granting motion for voluntary dismissal by noting “Defendants have neither filed an Answer to Plaintiff’s Complaint nor otherwise pled”); *see also Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th

⁴ While we recognize that voluntary dismissal is also available without court order by filing “a stipulation of dismissal signed by *all* parties who have appeared,” Fed. R. Civ. P. 41(a)(1)(A)(ii) (emphasis added), as the Court is aware, there are numerous *pro se* and defaulted Defendants who have been unresponsive at every stage of this litigation. Although Plaintiffs have no reason to believe any defendant would object to this particular motion, we believed it to be more efficient to seek this order directly from the Court, rather than attempt to obtain stipulations from parties who have been uncooperative or absent.

Cir. 1987) (“[T]he district court must focus primarily on protecting the interests of the defendant.”). Nor is there any motion for summary judgment pending. *Contra Howard v. Inova Health Care Servs.*, 302 F. App’x 166, 178–80 (4th Cir. 2008) (affirming denial of motion to withdraw after summary judgment motions had been filed).

Moreover, this is clearly not a situation where “voluntary dismissal potentially unravels the effect of an earlier legal ruling,” *RMD Concessions, L.L.C. v. Westfield Corp., Inc.*, 194 F.R.D. 241, 243 (E.D. Va. 2000). Rather, it seeks to reinforce this Court’s earlier ruling: that in this Court’s view, Ms. Pearce “has not sufficiently alleged her injuries.” (ECF No. 335 at 45.) The fact that Ms. Pearce retained claims against defaulted Defendants was a mere technicality. Even if Ms. Pearce were awarded default judgment against the defaulted Defendants, she would unlikely be able to recover any damages. Thus, her continuation in this lawsuit would be futile.

CONCLUSION

For the foregoing reasons, Ms. Pearce respectfully request that the Court grant her motion to withdraw and voluntarily dismiss her claims without prejudice pursuant to Rule 41(a)(2).

Dated: January 7, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I further hereby certify that on January 7, 2020, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

Loyal White Knights of the Ku Klux Klan
a/k/a : Loyal White Knights Church of
the Invisible Empire, Inc.
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Yanceyville, NC 27379

Moonbase Holdings, LLC
c/o Andrew Anglin
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Worthington, OH 43085

Andrew Anglin
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Fraternal Order of the Alt-Knights
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I further hereby certify that on January 7, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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